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WRITERS DIRECT DIAL

December 9, 1988

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FEDERAL EXPRESS

Carol T. Baschon, Esq.
Assistant Regional Counsel
Hazardous Waste Law Branch
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, GA 30365

Re: Carrier Air Conditioning
Collierville, Tennessee

Dear Ms. Baschon:

This letter responds to the Environmental Protection Agency's (EPA's) letter dated November 10, 1988, to Mr. Jess Walrath, Jr. of Carrier Corporation in connection with the above-referenced site. As we discussed by telephone last week, we represent Carrier in connection with the environmental issues raised by the November 10, 1988 letter. Mr. Walrath informs us he received this letter on Friday, November 18, making this response due out on Friday, December 9, 1988, 21 days after receipt.

The EPA letter raises several issues which this letter addresses including:

(A) responding to EPA's request for information pursuant to § 104(e) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e), and pursuant to § 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927;

(B) the Agency's interest in negotiating an agreement with Carrier whereby Carrier conducts a remedial investigation and Feasibility Study (RI/FS) at the site.



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This letter transmits documents requested by the information request. Because of the relatively short response time provided for in the request, and because Mr. Walrath has been travelling overseas for most of this time period, it is possible that there are additional responsive documents not yet located. Mr. Walrath and the legal department provided the enclosed documents prior to his departure overseas. If additional unprivileged responsive documents are located, they will be provided to EPA. We think that the enclosed documents do show Carrier's interest in the property, which appears to be the thrust of the questions.

The answers to the questions are as follows:

A. Responses to Information Requests.

1. Identify the person(s) answering these Requests on behalf of the addressee.

RESPONSE: The information reported in this response was provided by Mr. Jess Walrath, Manager of Environmental Assurance, and by Mr. Gerald Bailey, Director of Environmental and Health Services, and by Arthur W. Kanerviko, Jr., Esq., Assistant General Counsel, all of Carrier Corporation.

2. For each and every Request below, identify all documents consulted, examined, or referred to in the preparation of the answer, and provide time and correct copies of all such documents.

RESPONSE: A list of the documents is attached to this letter as attachment A, and copies of the listed documents are transmitted herewith.

3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Request contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents they may have.

RESPONSE: Because the questions pertain to the nature of leases and ownership interest in real property, Carrier believes that the best evidence of these leases and interests are the documents provided herewith. In addition, the negotiations concerning the transactions were handled through counsel, so Carrier believes that there will not be additional knowledgeable people who are not subject to the attorney-client privilege.

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4. Describe the property lease of the site between Carrier and the Town of Collierville, providing copies of each lease entered into between the parties.

RESPONSE: See the enclosed documents, especially the March 1967 lease, and April 1982 lease addendum.

5. Describe Carrier's purchase of the site from the Town of Collierville, providing copies of all documents related to that sale.

RESPONSE: See the enclosed documents, especially the July 6, 1987 letter exercising Carrier's option to purchase, and documented referenced therein.

6. Were/Are there any agreements between Carrier and the Town of Collierville concerning the disposal, storage, or transportation of hazardous substances at the site?

RESPONSE: Upon information and belief, a verbal agreement with the City of Collierville engineer was reached in connection with establishment of the lagoon. See Sept. 28, 1977 Beaupre memo.

B. Response to RI/FS Inquiry

As we discussed last week by telephone, Carrier is interested in negotiating in good faith to achieve a satisfactory resolution of the questions surrounding alleged contamination at the Collierville site. Indeed, Carrier has already worked for over two years with the State of Tennessee to produce a detailed site investigation report, dated October 18, 1988. A copy of this lengthy three volume report is transmitted herewith. Additionally, as stated in Carrier's August 1988 comments opposing EPA's proposal to list Collierville on the National Priority List (NPL), Carrier had reached agreement in principle with the City of Collierville concerning the replacement of Collierville's wells.

Because these state and local efforts are at a relatively advanced stage, Carrier believes that treatment of this site on the basis of EPA's proposed administrative order is inappropriate, and might delay any remedial work and lead to unnecessary and duplicative testing. For similar reasons, Carrier believes that this site is not appropriately addressed in the context of CERCLA. Rather, as explained in EPA's proposed

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revisions to the National Contingency Plan (NCP), and in Carrier's comments on the proposed NPL listing, this site is one which should be deferred from placement on the NPL and instead remedied under other authority -- either RCRA and the Safe Drinking Water Act, or under appropriate Tennessee law, or some combination thereof.

We believe that Carrier's work to date with the State of Tennessee is ample demonstration of good faith and our willingness to conduct the appropriate work. In our view, not only EPA and Carrier, but the State of Tennessee and City of Collierville will ultimately need to be involved in this process if we are to avoid inconsistent and duplicative requirements. We are interested in the prompt resolution of concerns about this site, and believe that an early meeting with EPA Region IV officials to discuss appropriate means to do so would be productive. We will be calling soon to arrange such a meeting.

Sincerely,

A handwritten signature in cursive script, reading "Russell V. Randle".

Russell V. Randle
Counsel to Carver Corporation

RVR/tlc
Enclosure